



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 4 OF 1994
WITH CIVIL APPLICATION NO. 3266 OF 2017
IN SA/4/1994**

Shaikh Hamid Shaikh Mohammad And Another.

VERSUS

Syed Yusuf Syed Pathru.

Mr. S. V. Natu, Advocate for appellants

Mr. P. P. Mandlik, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 15th January, 2025

PER COURT :-

1. This appeal under Section 100 of the Code of Civil Procedure takes exception to the judgment and decree passed by Trial Court in Regular Civil Suit No. 364/1981 and confirmation thereof in Regular Civil Appeal No. 176/1988.

2. Parties are referred to as 'plaintiff' and 'defendants' for the sake of convenience.

3. In order to appreciate the submissions made by the rival sides, it is necessary to take into consideration the facts in brief which led to the filing of this appeal.

4. Admittedly, the suit property is allotted originally to plaintiff under the provisions of the Maharashtra Housing and Area Development

Act, 1976 (for short "the Act"). Plaintiff was reside there and to pay rent to the Housing Board and obtain receipt towards the said payments. Plaintiff filed suit for injunction in respect of subject property bearing House No. 6/92 situated at Labour Colony, Nanded with the allegation that the defendants are trying to dispossess plaintiff from the suit property. During the pendency of the suit, it is claimed that the plaintiff is dispossessed and hence by amendment along with pleadings to that effect a prayer of possession of the suit property was sought.

5. Defendants filed written statement and oppose the contentions of the plaintiff. It is a case of defendants that defendant No. 1 was introduced as a tenant in the suit house by Smt. Khajabee, mother of original plaintiff and that he used to pay rent. Defendant further contended that they are occupants of the suit house and steps are taken for allotment of the sale to defendant No.1. It is claimed that on 04.04.1985, Housing Board has allotted the suit house to defendant No.1 and that he has made payment of arrears and charges as demanded by the Board. It is further claimed that on 17.05.1985 a final allotment letter is issued to defendant No.1 in respect of the suit house.

6. Learned trial Court as well as First appellate Court decreed the suit and directed removal of defendants from the suit house. Hence, this appeal.

7. Learned counsel for the defendants submits that the trial Court had no jurisdiction to entertain the suit in view of bar created by the provisions of Section 71 of the Act. It is his submission that specific plea was raised in this regard in the written statement so also issue was raised about non joinder of MHADA as a party to the said proceeding. According to him, once issue is raised by defendants about suit house being alleged to defendant No.1 and admittedly defendants are in possession thereof. Trial Court could not have decided suit without hearing MHADA. These issues were ignored by Trial Court as well as First Appellate Court. He placed reliance on the judgment of Hon'ble Supreme Court in case of **Sau Rajani Vs. Sau Smita & Anr, MANU/SC/1021/2022.** He, therefore, submits that for want of jurisdiction of Trial Court so also the ground of non joinder of necessary party suit deserves to be dismissed.

8. Learned counsel for the plaintiff submits that there are concurrent findings recorded by both Courts below and in absence of any perversity being shown there, interference is not called at the hands of this Court. It is his contention that since during the pendency of the suit, the allotment has been effected, the principle of lis pendense would certainly apply to the present case. To support the submission, he placed reliance on the judgment of **Nirmala Dhondiram Kadam Vs.**

Shatrughana K. Padava & others 1984(1) Bom.C.R. 395

9. The appeal was admitted on Ground Nos. C, D, F and H of appeal memo. In the facts of the case, following substantial questions of law arises in this appeal

i) Whether Civil Court had jurisdiction to decide the suit ?

ii) Whether suit was liable for dismissal for want of joining MHADA as a party to the suit ?

iii) Whether the evidence occurred during the pendency of the suit are effected by Section 52 of the Transfer of Property Act i.e., lis pendense ?

iv) Whether the plaintiff was entitled for recovery of possession of the suit house in view of termination of allotment of suit house to the plaintiff from 1972 ?

10. There is no dispute about the fact that defendants had raised specific issue of the jurisdiction of the Court in entertaining the suit. Admittedly, the suit house is allotted by MHADA. The provisions of the Act, therefore, would apply to this case to the case in hand. Section 66 of the Act empowers the Competent Authority appointed under Section 65 to evict certain persons from the Authority premises. These powers include power to evict any person in unauthorised occupation for

authority premises. Section 70 provides for an appeal from the order passed by Competent Authority under Section 66 or Section 67 of the Act. Thus, the act is a complete in respect of eviction of any person from any Authority premises. In the backdrop of these provisions, there is clear bar of the jurisdiction of Civil Courts under Section 71 of the Act. For the sake of ready reference, the said provision is reproduced as follows:

"71.Bar of jurisdiction of civil courts.

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Authority premises under this Chapter, or the recovery of the arrears of rent, compensation, amount or damages for use and occupation of such premises, or in respect of any order made or to be made or any action taken or to be taken by the Competent Authority or the appellate officer in the exercise of any power conferred by or under this Chapter, or to grant any injunction in respect of such order or action."

11. Admittedly, the suit house is Authority premises. Since suit premises is 'Authority Premises' as contemplated by Section 2(4) of the Act, provisions of Section 66 for the purpose of eviction of any person therefrom would certainly apply. In such circumstances, this Court finds substance in the contention of learned counsel for the defendant. There is no dispute about the fact that MHADA has allotted the suit house to

defendant No.1. The said fact was brought on record by the defendants before the Trial Court. Now question arises as to whether in such circumstance, it was open for the learned trial Court to pass decree of eviction of defendants from the suit house.

12. The judgment relied upon by the learned counsel for the plaintiff in case of *Nirmala (supra)*, the facts as appearing on the judgment indicates that the suit therein was filed by the plaintiff for eviction of trespasser from the suit premises. In the said fact, it was held that in respect of dispute between the private persons, the same can only be adjudicated upon by the Civil Court and the Competent Authority does not come into the picture in respect of such dispute between private persons. As against this, in the instant case, there is allotment of the suit house in favour of defendants and in such circumstances, it cannot be said that unless the said allotment is set aside by the Competent Court of law, there would not be jurisdiction with the Civil Court to direct eviction of the defendants from the suit house. Once, the suit was not tenable in respect of the decree of eviction, the judgment and decree passed by the trial Court and confirm by the First Appellate Court cannot sustain. Consequently, other issues sought to be canvassed are not required consideration.

13. At this stage, learned counsel for the plaintiff submits that

since this Court has held that the Civil Court has no jurisdiction to try the suit for eviction of defendants from the suit house and since it is held that it is a Competent Authority which has a jurisdiction to cause eviction if any, he seeks granting liberty to the plaintiff to approach the Competent Authority for taking appropriate action under the provisions of the Act including action of eviction of defendants from the suit house. He also contents that the time lapsed in pursuing wrong forum may be excluded while counting the period of limitation. Learned counsel for the defendant opposed the said submission.

14. Since this Court has held that the trial Court had no jurisdiction to entertain the suit for eviction of defendants from the suit house, it is necessarily to be held that the plaintiff has adopted remedy before wrong forum. In view of the provision Section 14 of Limitation Act, the period consumed for pursuing a remedy bonafide before wrong forum is to be excluded from computation of period of limitation.

15 Having regard to these facts, this Court is inclined to accept the contention of the learned counsel for the plaintiff. Considering peculiarity of the circumstances, a proceeding, if any, is initiated by plaintiff within a period of 4 weeks from today, the issue of limitation shall neither be raised nor entertained.

16. It is however clarified that the leave granted for initiation of the proceedings as per the law not to be construed as plaintiff having made out any case on merit. Competent Authority to decide any proceeding if any, so filed, in accordance with law. All contentions of rival parties are kept specifically open.

17. In view of the above, the substantial question of law whether Civil Court had jurisdiction to decide the suit is decided in negative. As a result of which no further findings are recorded on the other issues.

18. Consequently, appeal stands allowed. Regular Civil Suit No.364/1981 stands dismissed.

(R. M. JOSHI, J.)

bsj